IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 669/2006

BABULAL GOSWANI Vs. STATE OF RAJASTHAN & ANR.

DATE: 18.01.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Sudarshan Laddha for the petitioner.
Mr. Ashwani Kumar Sharma, PP for the State.
Mr. B.D. Agarwal with
Mr. Prahlad Sharma for the respondent No.2.

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Brief facts of the case are that the complaint for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') was filed in the Court of Additional Chief Judicial Magistrate No.3, Kota on 19.08.2002 in which cognizance was ordered to be taken vide order dated 04.08.2003. The petitioner filed an application under Section 203 Cr.P.C. stating that as the complaint has been filed with delay and after expiry of statutory period as stipulated in the provisions of Section 138 of the N.I. Act, therefore, the complaint is required to be dismissed on account of delay alone. It is further submitted that no sufficient cause was shown by the non-petitioner No.2 for delay in filing of the

complaint as per the provisions of Section 142 of the N.I. Act and without explanation which is required to be given by the applicant but the Court below has taken cognizance and condoned the delay.

Both the learned counsel appearing for the respective parties have refereed Section 142(b) of the Negotiable Instruments Act, 1881, which reads as under:-

> **142. Cognisance of offences-** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-
>
> (a)_ _ _ _ _ _ _ _ _
>
> (b) such complaint is made within one month of the date on which the cause-of-action under clause (c) of the proviso of Section 138:
>
> Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period."

After referring Section 142 of the N.I. Act, it is stated on behalf of the petitioner that the complaint was required to be filed on 17.08.2002 but the same was filed on 19.08.2002 after stipulated period. Thus, it cannot be said that the complainant was filed within the limitation period of one month

from the date on which the cause of action arisen. Thus, the complaint itself deserves to be dismissed being filed after delay.

In support of his submissions, the learned counsel for the petitioner has placed reliance on the judgment rendered by this Court in the case of ***Firm Vanechand Satish Kumar & Anr. Vs. State of Rajasthan & Anr., decided on 21.03.2006 and reported in 2006(4) R.D.D. 2090 (Raj.),*** wherein this Court has dealt with this controversy considering the ratio decided by the Hon'ble Supreme Court in the case ***Prem Chand Vijay Kumar Vs. Yashpal Singh & Anr., 2005 SCC(Cri.) 1153,*** wherein the Apex Court has held that dishonour of cheque on each presentation gives a fresh right to present it again during the period of its validity, but it does not give rise to afresh cause of action. It was further held that complaint has to be filed within one month from the day immediately following the day on which the period of 15 days from the date of receipt of the first notice by the drawer expires and if the complaint has not been filed within one month following the day on which the period of 15 days from the date of receipt of first notice expires, the complaint is barred by period of limitation.

Relying upon the aforementioned judgment, the learned counsel for the petitioner further submits that since the present complaint is also filed after expiry of one month, therefore, the complaint is barred by the period of limitation.

On the other hand, learned counsel appearing for respondent No.2 has also referred Section 142 of the N.I. Act and as per the proviso, more particularly Section 142(b) proviso, wherein cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period. He further submits that complaint which has been filed is within limitation as prescribed under Section 142 of the N.I. Act as the notice of 15 days has been given by the respondent No.2 and the same was received on 04.07.2002 and after completion of 15 days, one month's statutory period for filing complaint starts and as per the provisions of law, the period of limitation expired on 18.08.2002 and 18.08.2002 was sunday and on 19.08.2002 the complaint was filed, thus, the complaint was within limitation.

In support of his submissions, the learned counsel for the respondent No.2 has placed reliance on the judgment rendered by the Hon'ble Supreme Court in

the case of ***M/s Saketh India Ltd. and others Vs. M/s India Securities Ltd., reported in AIR 1999 SC 1090,*** wherein the Hon'ble Supreme Court has observed that the period of one month for filing compliant will be reckoned from the day immediately following the day on which period of 15 days from date of receipt of notice by drawer, expires.

Admittedly, in the instant case, the last date for filing complaint was 17.08.2002 and for reckoning the period for the purpose of limitation immediately following the day on which the period of 15 days expired i.e. 17.07.2002 and the complaint can be filed on 18.08.2002 but 18.08.2002 was sunday, therefore, on 19.08.2002 the respondent No.2 filed complaint and thus, the complaint itself is within limitation as per the ratio decided by the Hon'ble Supreme Court in the aforementioned case of ***M/s Sakesh India Ltd. and others (supra).***

Having considered the rival submissions of the respective parties and upon careful perusal of the order impugned dated 13.06.2006, I find no illegality in the impugned order and nothing wrong has been committed by the trial Court while rejecting the

application filed by the petitioner dated 23.03.2006. No interference whatsoever is called for.

Consequently, the revision petition fails and the same is hereby dismissed.

(K.S. RATHORE),J.

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